

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Bert Ernest Daby,

Petitioner,

v.

ORDER

Civil No. 05-1010 (MJD)

Dean Mooney, Director
of the Minnesota Sex
Offender Program,

Respondent.

This matter is before the Court upon Petitioner's Application for a
Certificate of Appealability.

Petitioner seeks to appeal the Order of this Court dated March 22, 2006, in
which the Court adopted the Report and Recommendation of Chief Magistrate
Judge Raymond Erickson, recommending summary dismissal of Petitioner's
habeas petition under 28 U.S.C. § 2254.

An applicant's appeal of a final order in a habeas corpus proceeding brought
pursuant to 28 U.S.C. §2254 may not proceed unless a district or circuit judge
issues a certificate of appealability. 28 U.S.C. §2253(c) (1) (A). In order for a
certificate of appealability to issue, an applicant must make a "substantial showing
of the denial of a constitutional right." 28 U.S.C. §2253(c) (2). "A substantial
showing is a showing that issues are debatable among reasonable jurists, a court
could resolve the issues differently, or the issues deserve further proceedings."

Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997). Based on the files, records and proceedings herein, the Court finds no basis upon which to grant Petitioner the requested relief.

IT IS HEREBY ORDERED that Petitioner's Application for a Certificate of Appealability is summarily dismissed.

Date: May 3, 2006

s / Michael J. Davis
Michael J. Davis
United States District Court